OTHER SUPERVISORY ACTIVITIES

INVESTIGATIONS

Consumer Complaints

Consumer complaint investigations are generally handled by Consumer Response Center staff. Examiners will be requested to assist if an on-site review is determined to be necessary. As with all sensitive matters, close cooperation between staff in the field office, region and Washington is essential to a prompt and appropriate resolution of a complaint.

Revised FDIC procedures for investigating complaints of illegal discrimination were circulated in February 2003, and replace those previously found in both the Compliance Examination Manual and the Complaint and Inquiry Manual. The revised procedures, which must be used by all DSC staff involved in a discrimination investigation, are located in RD Memo 03-008 and on the web at: http://fdic01/division/dsc/memos/memos/6000/03-008.pdf.

Although directed at discrimination complaints, the general approach of the revised investigation procedures may be applied to other types of complaints.

Enforcement Actions

To obtain information or evidence necessary to support an enforcement action, a formal investigation may be conducted pursuant to Section 10(c) of the FDI Act. Through such an investigation administrative subpoenas may be issued for information or testimony. Orders of Investigation must be developed in cooperation with the Legal Division, which shares delegated authority for this process.

VISITATIONS

Introduction

Visitations are usually targeted events aimed at specific operational or regulatory areas, but can also focus on compliance management systems that require more than the normal level of supervisory attention. Visitations are conducted by the FDIC to review the compliance posture of an institution that is newly chartered, involved in a recent or proposed merger, or recently converted to state nonmember status; review an institution's progress on corrective actions since its last examination; ascertain an institution’s compliance with an enforcement action; and investigate problems brought to the FDIC’s attention.

List of Pertinent Memos

1. Memorandum: Information Package for De Novo Banks; 08/01/97 (Transmittal No. DCA-97-023)
   http://fdic01/division/dsc/memos/memos/direct/denovo.pdf

Conducting a Visitation

Visitations can be scheduled at any time at the discretion of Regional Office management. Prior approval of Washington Office management is required when substituting a visitation for an examination of an institution with adverse compliance or CRA ratings.

Visitations may be expanded to a regular compliance/CRA examination with the Examiner-in-Charge's recommendation and Regional Office management's concurrence. This recommendation should be considered in situations where:

- Significant deficiencies are noted in a financial institution's compliance/CRA policies or procedures
- Significant noncompliance is noted regarding previously criticized areas
- Significant noncompliance with an informal or formal enforcement action is noted.

General Procedures

1. Perform appropriate off-site review and analysis procedures prior to the commencement of the on-site visitation. Tailor the visitation to address the compliance deficiencies or concerns identified, or the matters under review. A Risk Profile and Scoping Memorandum is not required.

2. Notify the institution of the date of the visitation.

3. Conduct the on-site visitation. An initial meeting with management should define the scope of the visitation.

4. If applicable, prepare a list of violations. Examiners will use the violations pages from the Report of Examination and include these pages with the visitation report submitted to the Regional Office.

5. Conduct a closing meeting with management and, if the situation warrants, a meeting with the board. Leave a copy of the violations list with management.

Preparing the Visitation Report

1. Prepare Page 1 (Report of Visitation — Compliance) (required).
    - Use Single-Page Visitation format or Multi-Page Visitation format (The financial institution must receive, either in the visitation report, report of examination, or both, a discussion of compliance with the provisions of the outstanding enforcement action)
    - Use topical headings, such as those used to prepare Page 1 comments for the Compliance Report of Examination.

2. Prepare Violations Pages (if applicable).

3. Prepare Supervisory Comments (Page A,– Supervisory Section) (optional)
    - Include recommendation to the Regional Office on whether to remove or retain reporting requirements contained within outstanding formal or informal enforcement actions (if not included on Page 1)

4. Forward the Report of Visitation to the review staff designated by Regional Office management.

5. Update all appropriate SOURCE data fields, and ensure that all SOURCE submission requirements are met.

6. Regional review staff will review the Report of Visitation. At the discretion of the Regional Office management, visitation findings will be forwarded to the financial institution by either of the following:

- Transmittal letter only
- Transmittal letter <u>and</u> Report of Visitation

*NOTE: Visitations **may** result in the removal of informal enforcement actions, but **will not** result in rating(s) changes or in removal of formal enforcement actions.*

Documenting Visitation Findings

Appropriate workpapers must be completed for applicable areas reviewed during each visitation.

ENFORCEMENT ACTIONS

Introduction

The FDIC may initiate informal or formal action when an insured depository institution is found to be in an unsatisfactory condition. Informal actions represent the final supervisory step before formal enforcement proceedings are initiated. The FDIC has broad enforcement powers under the Federal Deposit Insurance (FDI) Act to issue formal enforcement actions.

This section provides a brief summary of the types of informal and formal actions that the FDIC has the authority to issue. When considering an enforcement action, the consultation policy should be followed, as well as procedures set forth in the DSC Formal and Informal Action Procedures (FIAP) Manual.

Types of Enforcement Actions

<u>Informal actions</u> are voluntary commitments made by the board of directors/trustees of a financial institution. They are designed to correct identified deficiencies and ensure compliance with federal and state banking laws and regulations. Informal actions are neither publicly disclosed nor legally enforceable.

The most common informal enforcement actions used by the FDIC are the following:

- <u>Board Resolution</u>: Informal commitments developed and adopted by a financial institution's board of directors/trustees, often at the request of an FDIC Regional Director, directing the institution's personnel to take corrective action regarding specific noted deficiencies. The FDIC is not a party to the resolution, but approves and accepts the resolution as a means to initiate corrective action.

- <u>Memorandum of Understanding</u>: Informal agreement between an institution and the FDIC that is drafted by the Regional Office staff to address and correct identified weaknesses in an institution's compliance or CRA posture. A Memorandum of Understanding is generally used in place of a board resolution when the FDIC has reason to believe that a board resolution would not adequately address the deficiencies noted during the examination.

<u>Formal enforcement actions</u> are those taken pursuant to the powers granted to the FDIC's Board of Directors under Section 8 of the FDI Act. Each situation and circumstance determines the most appropriate action to be taken.

Formal actions used in connection with compliance matters may include the following:

- <u>Termination of Insurance</u>: Section 8(a)

- Cease-and-Desist Order: Section 8(b): Issued to halt violations of law as well as to require affirmative action to correct any condition resulting from such violations. By ordering an institution or an institution affiliated party (IAP) to cease and desist from practices and/or take affirmative actions, the FDIC may prevent the problems facing the institution from reaching such serious proportions as to require more severe enforcement actions.

- Temporary Cease-and-Desist Order: Section 8(c): Issued in the most severe situations to halt particularly egregious practices pending a formal hearing on permanent Cease-and-Desist Orders issued pursuant to Section 8(b).

- Removal and Prohibition Order: Section 8(e)(1): The FDIC has the authority to order the removal of an IAP, i.e. director, officer, employee, controlling stockholder other than a bank holding company, or agent for an insured depository institution. The prohibition may be for specific activities or may be industry wide.

- Temporary Suspension Order: Section 8(e)(3): The FDIC may order the temporary suspension of an IAP pending a hearing on an Order of Removal if the individual's continued participation poses an immediate threat to the institution or to the interests of the institution's depositors.

- Suspension Order: Section 8(g): Issued to IAPs who are charged with felonies involving dishonesty or a breach of trust pending the disposition of the criminal charges.

- Civil Money Penalties: Section 8(i)(2): Assessed to sanction an institution or IAP according to the degree of culpability and severity of the violation, breach, and/or practice and also to deter future occurrences.

References

DOS/DCA Formal and Informal Action Procedures Manual (FIAP), dated 9/15/96: http://fdic01/division/dsc/rm/fiap_manual/index.html

Federal Deposit Insurance Act, Section 8: 12 U.S.C. § 1818
http://www.fdic.gov/regulations/laws/rules/1000-900.html#1000sec.8

12 C.F.R. § 308 (Rules of Procedure; multiple subparts)
http://www.fdic.gov/regulations/laws/rules/2000-1900.html#2000part308

Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies
http://www.fdic.gov/regulations/laws/rules/5000-1600.html#5000interagencypr

Interagency Notification and Coordination of Enforcement Actions by the Federal Banking Regulatory Agencies http://www.fdic.gov/regulations/laws/rules/5000-

700.html#5000interagencyno

Administrative Enforcement of the Truth in Lending Act – Restitution
http://www.fdic.gov/regulations/laws/rules/5000-300.html#5000administrativeeo

DCA Memorandum: Revised Guidance About Civil Money Penalties For Flood Insurance Violations (7/31/2001)
http://fdic01/division/dsc/memos/memos/direct/DCA001006.PDF

FIAP Manual, Chapter on Investigations (currently being revised).

TRUTH IN LENDING (TIL) RESTITUTION VERIFICATION

Introduction and Objectives

1. Determine during PEP whether the prior Report of Examination included a request for restitution pursuant to Section 108(e) of the Truth in Lending Act.

   NOTE: Refer to "Further Guidance on Finance Charge Tolerances Provided in 1995 Amendments to Truth in Lending Act" memorandum to Regional Directors, dated March 1, 1996.

   "Further Guidance on Finance Charge Tolerances Provided in 1996 Amendments to Truth in Lending Act" memorandum to Regional Directors and Deputy Directors, dated October 2, 1996.

2. Become familiar with the nature of the violations and the extent of the file search necessary to identify affected loans.

3. Review the correspondence file to determine if the financial institution has reported completion of the reimbursements or if there are any unresolved issues pending, such as a formal request for relief from reimbursement.

   NOTE: Refer to the "Requests for Relief from Reimbursement Under the Truth in Lending Act," FIL #19-97, dated 3/10/97.

4. Perform the following examination procedures during PEP in those instances where the number of loans subject to restitution is relatively small and requesting the institution to provide relevant documentation would not be burdensome.

The objectives are to:

- Determine that a complete file search was conducted.
- Verify that reimbursement calculations and worksheets from the financial institution are

accurate and conform with violations cited.

- Verify that reimbursements were made to all entitled customers and dispersed correctly.

Verification Procedures

The following procedures are to be used when reviewing an institution’s compliance with restitution requested as a result of reimbursable Truth in Lending (TIL) violations cited at the previous compliance examination.

1. Identify the person(s) responsible for making the calculations and providing reimbursement.
2. Discuss the method used to determine which loans were reimbursable.

3. Determine that an appropriate file search and any subsequent reimbursements were completed in accordance with direction received from the FDIC through the prior Compliance Report of Examination and transmittal letter sent to the financial institution.

4. Consider the following items when determining the scope of the review:

- Number of affected loans identified
- Effectiveness of overall compliance program
- Management’s willingness to correct prior violations
- Nature of violations
- Time constraints

5. Review reimbursement documentation for accuracy.

6. Review reimbursement documentation for the following items:

- Reimbursement calculations
- Canceled reimbursement checks (When reviewing canceled checks be sure to look at the endorsement(s) on the back of the checks to ensure the checks have been endorsed by the appropriate individual(s))
- Verify, through a sample of checks, the validity of the endorsement signature.

7. Compare the list of reimbursable exceptions, maintained in the prior Compliance Examination workpapers, with the file search and actual reimbursements made by the financial institution.

8. If either the file search or reimbursements were not handled correctly, immediately inform the Field Supervisor and the Regional Office.

9. The examiner must complete appropriate workpapers, in accordance with instructions, and attach them to the appropriate documentation of the financial institution’s reimbursement calculations.

References

1. Joint Statement of Policy: Administrative Enforcement of the Truth in Lending Act—Restitution
   http://www.fdic.gov/regulations/laws/rules/5000-300.html#5000administrativeeo

2. FIL #19-97 – Date of issuance March 10, 1997.
   Requests for Relief from Reimbursement under the Truth in Lending Act
   http://www.fdic.gov/news/news/financial/1997/fil9719.html

3. FIL #20-98 – Date of issuance February 25, 1998.
   Reimbursable Violations of the Truth in Lending Act
   http://www.fdic.gov/news/news/financial/1998/fil9820.html

4. Attachment to FIL-20-98 - Interagency Questions and Answers Regarding Corrective Action Time Periods under the Truth in Lending Act Policy Guide (January 1998)
   http://www.fdic.gov/news/news/financial/1998/fil9820a.html

Tips/Job Aids

1. Procedures for Determining When a "Pattern or Practice" Exists for Certain Violations of Regulation Z (Truth in Lending Act), Transmittal #98-021, dated 9/11/98. http://fdic01/division/dsc/memos/memos/direct/6430-10.pdf

2. Additional Guidance on "Immediately Preceding Examination" for Purposes of Truth in Lending Restitution, Transmittal #98-030, dated 12/23/98
   http://fdic01/division/dsc/memos/memos/direct/6430-11.pdf

3. Calculating APRs for Periodic Statements in Accordance with Regulation Z (Truth in Lending Act), Transmittal #98-020, dated 7/31/98
   http://fdic01/division/dsc/memos/memos/direct/6430-9.pdf

4. Restitution Procedures for Regulation Z (Truth in Lending Act), Transmittal #97-030, dated 9/18/97 http://fdic01/division/dsc/memos/memos/direct/6430-6.pdf

APPEALS

Introduction

On June 28, 2004, the FDIC Board of Directors adopted revised Guidelines for Appeals of Material Supervisory Determinations (Guidelines), which describe the process by which financial institutions may appeal material supervisory determinations (MSDs) made by examiners and/or regional supervisory officials.

The revised Guidelines change the composition of the SARC, reducing it from five to three voting members, and incorporate changes to the procedures governing SARC appeals. Included are new rules under which the Division of Supervision and Consumer Protection (``DSC'') issues written decisions if it denies requests for review of material supervisory determinations; if dissatisfied with the division's determination, institutions decide for themselves whether to appeal to the SARC; and SARC decisions will be published, with exempt material redacted. The types of determinations eligible for review by the SARC and the standards by which such appeals are decided remain unchanged.

List of Pertinent Memos, FILs

Guidelines for Appeals of Material Supervisory & Deposit Insurance Assessment Determinations, http://www.fdic.gov/regulations/laws/sarc/index.html

Guidelines for Processing Appeal of Material Supervisory Determinations, http://fdic01/division/dsc/memos/memos/6000/04-045.pdf

Appeals Process

Financial institutions are asked to make a good faith effort to resolve the dispute concerning the MSD with the on-site examiner and/or the Regional Office. The on-site examiner and the Regional Office are expected to promptly respond to any concerns raised by an institution. However, such efforts are not required. If the institution is unable to resolve a dispute with an examiner or Regional Office, and would like to initiate an appeal, the financial institution must submit a written request for review to the Director of the Division of Supervision and Consumer Protection within 60 calendar days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. .

The Director, Division of Supervision and Consumer Protection, will issue a written determination of the request for review, setting forth the grounds for that determination, within 30 days of receipt of the request. An institution that does not agree with the written determination rendered by the Director of the Division of Supervision and Consumer Protection must appeal that determination to the SARC within 30 calendar days from the date of that determination. The Director's determination will inform the institution of the 30-day time period for filing with the SARC and will provide the mailing address for any appeal the institution may wish to file.

If the Director of the Division of Supervision and Consumer Protection determines that an institution is entitled to relief that the Director lacks delegated authority to grant, the Director may, with the approval of the Chairperson of the SARC, transfer the matter directly to the SARC without issuing a determination. Notice of such a transfer will be provided to the institution.

***Prohibition Against Examiner Retaliation* -** Any retaliation, abuse, or retribution by FDIC personnel, including an examiner, against an institution that appeals a MSD constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action by the Division Director.